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Dear Mr Cusack

Applicant	D&D NATURAL HEALTH PTY LTD
Application No.	APP-0006084955
Application for	Packaged liquor licence
Proposed licence name	Green Soul Trader
Proposed premises	Shop 21, Bridgepoint Shopping Centre 1-3 Brady Street MOSMAN NSW 2088
Proposed trading hours	Monday to Saturday 8:30 am to 6:00 pm Sunday 10:00 am to 6:00 pm
Legislation	Sections 3, 31 and 45 of the <i>Liquor Act 2007</i>

**Decision of the Independent Liquor & Gaming Authority
Application for a packaged liquor licence – Green Soul Trader**

The Independent Liquor & Gaming Authority considered the application above, and decided on 13 January 2020 to **refuse to grant** the licence pursuant to section 45 of the *Liquor Act 2007*.

A statement of reasons for this decision is attached at the end of this letter.

If you have any questions, please contact the case manager at michelle.stark@liquorandgaming.nsw.gov.au.

Yours faithfully

Philip Crawford
Chairperson
For and on behalf of the **Independent Liquor & Gaming Authority**

Statement of reasons

Decision

1. On 13 August 2019, D&D NATURAL HEALTH PTY LTD (“the Applicant”) lodged with Liquor & Gaming NSW (“L&GNSW”), for determination by the Independent Liquor and Gaming Authority (“Authority”), an application (“Application”) for a packaged liquor licence (“Licence”), for the premises at Shop 21, Bridgepoint Shopping Centre, 1-3 Brady Street, Mosman (“Proposed Premises”).
2. The Authority considered the Application and decided on 13 January 2020 to refuse to grant the licence under to section 45 of the *Liquor Act 2007* (“Act”).
3. The Authority has reached this decision on the basis that the Application does not meet the requirement under section 31 of the Act. Specifically, the Authority finds that the Proposed Premises comprises a general store as contemplated by the Act, and the Authority is not satisfied that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.

Relevant material considered by the Authority

4. In reaching this decision the Authority has had regard to material and submissions provided by the Applicant in support of the Application, and the legislative requirements under sections 3, 31 and 45 of the Act.
5. For the purpose of this decision, it is not necessary to consider, and the Authority has not considered, the other material before the Authority relevant to the determination of whether the other criteria for granting the Licence have been met.
6. The Authority is satisfied that procedural fairness was afforded to the Applicant and interested parties regarding this decision, as all parties required to be notified of the Application were provided with the opportunity to make submissions.
7. A list of the material considered by the Authority is set out in the Schedule.

Legislative framework

8. The Authority has considered the Application in the context of the following legislative provisions.

Objects of the Act

9. The objects of the Act, as set out in section 3, are to regulate the supply of liquor in line with the expectations, needs and aspirations of the community, and facilitate the balanced and responsible development of the liquor industry and related industries.
10. In the pursuit of these objectives, section 3 requires the Authority to, in determining a liquor licence application, have due regard to the need to minimise harm associated with misuse and abuse of liquor, encourage responsible liquor supply practices, and ensure that the supply of liquor does not detract from the amenity of community life.

Restrictions on granting a packaged liquor licence for a general store

11. Section 31 of the Act provides that:
 - a) the Authority must not grant a packaged liquor licence for premises comprising a general store unless, among other things, it is satisfied under section 31(1)(a) that no other take-away liquor service is reasonably available to the public in the neighbourhood of the premises concerned, and
 - b) a general store means a convenience store, mixed business store, corner shop or milk bar which primarily sells groceries or associated small items by retail within a retail floor area of not more than 240 square metres.

Decision making in relation to licence applications

12. Section 45 of the Act provides that the Authority may, after considering an application for a licence and any relevant matters, grant or refuse to grant the licence.

Key findings

13. The Proposed Premises comprises a store with a retail floor area of approximately 180m². According to the Applicant, the purpose of the Application is to enable the sale of organic, natural and boutique liquor products to complement the large selection of organic, natural and eco-friendly grocery, health, home and beauty products sold at the store.
14. The Applicant contended that the proposed business is a “specialist organic store” and not a general store as contemplated by the Act.
15. The Authority has had regard to photographs of the store and a product inventory listing some 5,500 items sold at the store, including pantry items such as chocolate, tea, jam and flour; cleaning products; baby food and nappies; health items such as supplements and protein powders; make up and beauty items; homewares such as jars and candles; apparel such as shirts, tote bags and bracelets; pet supplies such as food, treats and shampoo; and refrigerated and frozen products such as vegan butters, organic drinks and frozen berries and vegetables.
16. Having regard to characteristics of the store as outlined above, the Authority considers that Proposed Premises is general store for the purposes of section 31 of the Act, on the basis that it is a mixed business shop that has a retail floor area of less than 240 square metres, and is used primarily for the retail sale of groceries and associated small items.
17. The Authority notes the observation by the NSW Civil and Administrative Tribunal in *MJ Trading v Independent Liquor and Gaming Authority* [2018] NSWCATAD 260 that:
- [19] A mixed business is ‘a small grocery shop, which also sells a selection of other merchandise.’ According to the Macquarie Dictionary Online, a grocery is a commodity sold by grocers and a grocer is a dealer in general supplies for the table, as flour, sugar, coffee, etc., and in other articles of household use.*
18. The Authority does not accept the Applicant’s contention that the organic, natural and eco-friendly nature of the products sold at the Proposed Premises is relevant to the consideration as to whether the Proposed Premises comprises a general store.
19. Having found that the Proposed Premises is a general store, the Authority then considers the existing availability of take-away liquor service in the neighbourhood of the Proposed Premises.
20. Noting that there are currently 13 packaged liquor licences and two full hotel licences authorised to sell packaged liquor in Mosman, the Authority is not satisfied that the requirement under section 31(1)(a) of the Act has been met, as it is not satisfied that no other take-away liquor service is reasonably available to the public in the neighbourhood of the Proposed Premises.
21. Accordingly, the Authority refuses to grant the Licence.



Philip Crawford
Chairperson

Important Information:

In accordance with section 13A of the *Gaming and Liquor Administration Act 2007* a relevant person (the Applicant or a person who was required to be notified of the Application and who made a submission to the Authority or the Secretary in respect of the Application) who is aggrieved by this decision may apply to NCAT for an administrative review under the *Administrative Decisions Review Act 1997*.

An application to NCAT must be made within 28 days of notice of this decision being published on the Liquor & Gaming website <https://www.liquorandgaming.nsw.gov.au/Pages/ilga/decisions-of-interest/decisions-of-interest.aspx> and be accompanied by the fee prescribed by the regulations.

For more information please contact the NCAT Registry at Level 10 John Maddison Tower, 86-90 Goulburn Street Sydney. The NCAT website is at <http://www.ncat.nsw.gov.au/>.

Schedule

Material considered by the Authority

1. Completed online application dated 13 August 2019.
2. Category B Community Impact Statement dated 12 August 2019.
3. Document titled "Additional information – Application and Community Impact Statement" (undated).
4. Premises and floor plans for the Proposed Premises.
5. Applicant's submission in response to the assessment of the application dated 18 October 2019.
6. Correspondence from L&GNSW to the Applicant between 17 December 2019, and the Applicant's response dated 19 December 2019.
7. Correspondence from L&GNSW to the Applicant between 7 January 2020, and the Applicant's response of the same date, including five photographs of the Proposed Premises.
8. Correspondence from the Applicant dated 16 January 2020.